

1 Kenneth C. Absalom (SBN 114607)
2 LAW OFFICES OF NEVIN & ABSALOM
22 Battery Street, Ste.333
3 San Francisco, CA 94111
Telephone: (415)392-5040
4 Facsimile: (415) 392-3729

5 Attorneys for Defendant
6 Warehouse Union Local No.6

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 WASTE MANAGEMENT OF ALAMEDA)
COUNTY, INC.,)

12 Plaintiff,)

13 v.)

14 WAREHOUSE UNION LOCAL NO.6,)
15 INTERNATIONAL LONGSHORE AND)
WAREHOUSE UNION,)

16 Defendant)
17

C 07 3675 EMC

ANSWER TO COMPLAINT
FOR DAMAGES

18 COMES NOW Defendant WAREHOUSE UNION LOCAL NO.6, INTERNATIONAL
19 LONGSHORE AND WAREHOUSE UNION and answers the Complaint herein as follows:

20 JURISDICTION

21 1. Answering Paragraph 1 of the Complaint, Defendant admits the allegations contained
22 therein.

23 VENUE

24 2. Answering Paragraph 2 of the Complaint, Defendant admits the allegations
25 contained therein.

26 INTRADISTRICT ASSIGNMENT

27 3. Answering Paragraph 3 of the Complaint, Defendant admits the allegations contained

1 therein.

2 PARTIES

3 4. Answering Paragraph 4 of the Complaint, Defendant admits the allegations contained
4 therein.

5 5. Answering Paragraph 5 of the Complaint, Defendant admits the allegations contained
6 therein.

7 6. Answering Paragraph 6 of the Complaint, Defendant admits the allegations contained
8 therein.

9 7. Answering Paragraph 7 of the Complaint, Defendant admits the allegations contained
10 therein.

11 8. Answering Paragraph 8 of the Complaint, Defendant Admits the allegations contained
12 therein.

13 CITIZENSHIP OR AMOUNT IN CONTROVERSY

14 9. Answering Paragraph 9 of the Complaint, Defendant admits the allegations contained
15 therein.

16 FACTUAL ALLEGATIONS

17 _____ 10. Answering Paragraph 10 of the Complaint, Defendant admits the allegations
18 contained therein.

19 11. Answering Paragraph 11 of the Complaint, Defendant admits the allegations
20 contained therein.

21 12. Answering Paragraph 12 of the Complaint, Defendant admits the allegations
22 contained therein.

23 13. Answering Paragraph 13 of the Complaint, Defendant admits the allegations
24 contained therein.

25 14. Answering Paragraph 14 of the Complaint, Defendant admits that the three (3)
26 collective bargaining agreements referenced in the Complaint contain language titled “No strikes/No
27 lockout”, which is accurately quoted in part in Paragraph 14, line 16 through 21 of the Complaint.

1 Defendant further admits that such language is reflected in the Sections of the collective bargaining
2 agreements identified at Paragraph 14, lines 22 through 24. Except as so expressly admitted,
3 Defendant denies each and every other allegation contained in Paragraph 14, and specifically denies
4 that the quoted language reflects the parties' entire agreement with respect to the so-called "No
5 strike/No lockout" provisions of the applicable collective bargaining agreements. Defendant further
6 denies that such provisions "prohibit strikes during the term of the agreements".

7 15. Answering Paragraph 15 of the Complaint, Defendant admits the accuracy of the first
8 two sentences thereof. Defendant further admits that the quoted language appearing in lines 1
9 through 4 on page 5 of the Complaint, is contained in the so-called Letter of Understanding, but
10 denies that language is the only relevant part of such letter. Except as expressly admitted herein,
11 Defendant denies each and every other allegation contained in Paragraph 15 and objects to such
12 allegation to the extent that it calls for a legal conclusion; to that extent Defendant is not required
13 to either deny or admit such allegations.

14 16. Answering Paragraph 16 of the Complaint, Defendant admits the allegations
15 contained therein.

16 17. Answering Paragraph 17 of the Complaint, Defendant admits the allegations
17 contained therein.

18 18. Answering Paragraph 18 of the Complaint, Defendant admits the allegations
19 contained therein.

20 19. Answering Paragraph 19 of the Complaint, Defendant admits the allegations
21 contained therein.

22 20. Answering Paragraph 20 of the Complaint, Defendant lacks sufficient information
23 to form a belief as to the truth of the allegations contained in the first two sentences of Paragraph 20.
24 As to the remaining allegations contained in Paragraph 20, Defendant admits that at the time the
25 Complaint was filed Local 70 and WMAC were engaged in a labor dispute, and further avers that
26 such labor dispute was the result of an offensive lockout initiated by WMAC against Local 70. Said
27 labor dispute has since been resolved. Excepts as so expressly admitted, Defendant denies each and
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1 every other allegation contained in Paragraph 20.

2 21. Answering Paragraph 21 of the Complaint, Defendant admits the allegations
3 contained therein.

4 22. Answering Paragraph 22 of the Complaint, Defendant admits the allegations
5 contained therein.

6 23. Answering Paragraph 23 of the Complaint, Defendant admits that starting on July 3,
7 2007 some WMAC employees who are members of all three Local 6 bargaining units refused to
8 cross the picket lines established by Local 70 in support of its labor dispute with WMAC. Except
9 as so expressly admitted, Defendant denies each and every other allegations contained in Paragraph
10 23.

11 24. Answering Paragraph 24 of the Complaint, the allegations contained therein constitute
12 legal opinions and conclusions of law to which it is neither appropriate nor required that Defendant
13 admit or deny such allegations.

14 25. Answering Paragraph 25 of the Complaint, Defendant lacks sufficient information
15 to form a belief as to the accuracy of the allegations therein, and on that basis said allegations are
16 denied.

17 26. Answering Paragraph 26 of the Complaint, Defendant lacks sufficient information
18 to form a belief as to the truth of the allegations contained therein, and on that basis said allegations
19 are denied.

20 27. Answering Paragraph 27 of the Complaint, Defendant lacks sufficient information
21 to form a belief as to the accuracy of the allegations contained therein, and on that basis said
22 allegations are denied.

23 28. Answering Paragraph 28 of the Complaint, Defendant lacks sufficient information
24 to form a belief as to the accuracy of the allegations contained therein, and on that basis said
25 allegations are denied.

26 29. Answering Paragraph 29 of the Complaint, Defendant lacks sufficient information
27 to form a belief as to the accuracy of the allegations contained therein, and on that basis said
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1 allegations are denied.

2 CLAIM FOR RELIEF

3 **[Section 301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a)]**

4 30. Answering Paragraph 30 of the Complaint, Defendant incorporates herein as though
5 fully set forth each and every admission and denial it has propounded to Paragraph 1 through 29,
6 above.

7 31. Answering Paragraph 31 of the Complaint, Defendant denies each and every
8 allegations contained therein.

9 32. Answering Paragraph 32 of the Complaint, Defendant lacks sufficient information
10 to form a belief as to the truth of the allegations contained therein and on that basis the allegations
11 are denied.

12 33. Answering Paragraph 33 of the Complaint, Defendant admits that “Local 6's members
13 are permitted under the Agreements, under certain circumstances, to refuse to cross or work behind
14 a lawful primary picket line”. Except as so expressly admitted herein Defendant denies each and
15 every allegation contained in Paragraph 33 of the Complaint.

16 34. Answering Paragraph 34 of the Complaint, Defendant lacks sufficient information
17 to form a belief as to the truth of the allegations contained in Paragraph 34, and on that basis said
18 allegations are denied. In addition, said allegations appear to call for a legal conclusion or opinion
19 to which no answer from Defendant is required.

20 35. Answering Paragraph 35 of the Complaint, Defendant denies each and every
21 allegation contained therein.

22 36. Answering Paragraph 36 of the Complaint, Defendant denies each and every
23 allegation contained in the first sentence thereof. As to the remaining allegations contained in
24 Paragraph 36, Defendant lacks sufficient information to form a belief as to the accuracy of said
25 allegations and on that basis each and every such allegation is denied.

26 37. Answering Paragraph 37 of the Complaint, Defendant denies each and every
27 allegation contained therein.

AFFIRMATIVE DEFENSES

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2 1. As and for its First Separate and Affirmative Defense to the allegations contained in
3 the Complaint, Defendant avers that the Complaint fails to state a claim upon which relief may be
4 granted.

5 2. As and for its Second Separate and Affirmative Defense to the allegations contained
6 in the Complaint, Defendant avers that the Plaintiff has failed to exhaust its administrative remedies
7 prior to bringing suit herein.

8 3. As and for its Third Separate and Affirmative Defense, Defendant avers that Plaintiff
9 has failed to exhaust its obligations to submit such disputes to the internal grievance and arbitration
10 procedure provided under the applicable collective bargaining agreement.

11 4. As and for its Fourth Separate and Affirmative Defense, Defendant avers that
12 Plaintiff's claim for relief is subject to preemption under the National Labor Relations Act, as
13 amended, 29 U.S.C. §158 *et seq.*

14 5. As and for its Fifth Separate and Affirmative Defense, Defendant avers that
15 Plaintiff's claim for relief is barred under the doctrine of unclean hands.

16 6. As and for its Sixth Separate and Affirmative Defense, Defendant avers that
17 Plaintiff's claim for relief is barred under the doctrine of laches.

18 7. As and for its Seventh Separate and Affirmative Defense, Defendant avers that
19 Plaintiff has failed to undertake reasonable measures to mitigate its damages.

20 WHEREFORE, Defendant prays for the following relief:

- 21 1. That Plaintiff take nothing by its Complaint herein;
22 2. That Defendant be awarded its reasonable costs or suit herein;
23 3. That Defendant be awarded its reasonable attorney fees incurred in
24 responding to the within cause;
25 4. That Plaintiff's Complaint be dismissed with prejudice in its entirety; and
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5. That the Court grant Defendant such other and further relief as it may deem just and proper.

Dated: August 28, 2007

LAW OFFICES OF NEVIN & ABSALOM

/S/

By: _____

KENNETH C. ABSALOM
Attorney for Defendant

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure Defendant hereby demands a trial by jury of all issues which may be subject to a jury trial.

Dated: August 28, 2007

LAW OFFICES OF NEVIN & ABSALOM

By: /s/
Kenneth C. Absalom
Attorneys for Defendant